

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,

Plaintiff,

v.

TOWN OF LIMA and DAVID KYLE,
in his official capacity as Town Board Chair,

Defendants.

ORDER

13-cv-187-bbc

Under 28 U.S.C. § 2403(b), a district court is required to notify the state Attorney General in any case in which the constitutionality of a state statute is “drawn in question.” In this case, plaintiff Enbridge Energy is arguing that Wis. Stat. § 349.16(1)(c) “as interpreted and applied” by defendants Town of Lima and David Kyle violates both the supremacy clause, U.S. Const. Art. VI, cl. 2, and the commerce clause, U.S. Const. Art. I, § 8, cl. 3. The Court of Appeals for the Seventh Circuit has applied § 2403 to challenges under both the supremacy clause, Matter of Dunn, 988 F.2d 45, 46 (7th Cir. 1993), and the commerce clause. Dynamics Corp. of America v. CTS Corp., 794 F.2d 250, 259 (7th Cir. 1986). Accordingly, I will send a copy of this order and plaintiff’s complaint to the Wisconsin Attorney General so that he may decide whether he wishes to intervene on behalf of the state.

ORDER

IT IS ORDERED that the clerk of court is directed to send copies of this order and plaintiff Enbridge Energy's complaint to the Wisconsin Attorney General, in accordance with 28 U.S.C. § 2403.

Entered this 21st day of March, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge